without expressing views that might have a bearing on the general question of how far the "rights" of public servants are justiciable under the present Constitution, a question which could not be determined without going into the question of the distribution among the present constitutional organs of the powers which in Great Britain make up the prerogatives of the Crown. Moreover, that question may require consideration of the Irish Free State cases [*Wigg* v. *Attorney-General* (2) and *In re Transferred Civil Servants (Ireland) Compensation* (2)] and in the present proceedings neither side has attempted to derive any assistance from these cases.

In any event it is unnecessary to consider the point here by reason of the views I have formed regarding the point which the appellants wish to have decided.

I am reluctant to say anything that may hurt the feelings of old servants of the Government who have had the fortune, good or bad, to survive their retirement by over ten years but I cannot refrain from quoting the following observations by Viscount Dunedin in the case of *Nixon* v. *Attorney-General, supra,* (at p. 190) :—

"It is the right of every litigant who has lost his case before the Court of Appeal to bring an appeal to this House unless there is some statutory reason against it, and one cannot wonder that the gentlemen who have brought this appeal feel strongly upon the matter in which they think that they have been unjustly dealt with in regard to a pension. But although I say that, that does not make any difference as to the quality of the appeal when brought. I confess that I have listened for some hours without discovering that even the ingenuity of counsel could bring forward any argument that was much worth consideration, and I think they were driven, as they were in duty bound driven, to the ultimate virtue of persistency."

The whole question is a question of construction of regulation 15 and the answer seems to be crystal clear. When an officer is granted a pension he may at his option, that means his choice, take that pension or take a pension at the rate of three-fourths of that pension and a gratuity consisting of a lump sum and the option is said to be irrevocable. There is not a word as to why the option is given, and there is nothing said about the purpose of the gratuity being to pay debts or to buy a house or anything of the sort or about it being an advance of pension. The officer is offered a choice and it seems to me that when he makes that choice that is the end of the matter. The motives which may have induced Government to enact that law in 1925 and to re-enact it in 1951 may be of historical interest but unless they can be deduced from the terms of the statute itself they are irrelevant to the interpretation of the statute.

In the circumstances I would dismiss the appeal with costs.

Barakbah C.J. (Malaya) and **Ong Hock Thye F.J.** concurred.

Appeal dismissed.

Solicitors: *Lim Kean Siew & Co.*

ANG AH BAK v. S.E.A.C. CO.

[O.C.J. (Choor Singh J.) March 11, 1966]

[Singapore — Suit No. 577 of 1963]

Landlord and tenant — Claim to recover possession on ground that tenant was receiving rent in excess of the recoverable rent — Tenant ceasing to receive such rent before termination of tenancy — Whether action lies — Control of Rent Ordinance, (Cap. 242), s. 15(1)(g).

The plaintiff sought to recover possession of the ground and first floors of a house. It was found on the facts that the plaintiff was the tenant of the whole premises and that the defendant firm was a subtenant of the plaintiff in respect of the ground and first floors of the house. It was alleged that the defendants had sublet a cubicle on the ground floor at a rental of $190 which was in excess of the recoverable rent for that part or alternatively that the rent received by them for the part sublet including the apportioned rental or value of the part of the premises retained exceeded one hundred and ten per centum of the recoverable rent paid by them. The defendants alleged that they had stopped recovering rent in excess of the maximum permitted before the tenancy was terminated and they argued that the plaintiff could not therefore invoke paragraph (g) of section 15(1) of the Control of Rent Ordinance.

Held: when a tenant sublets the premises or any portion thereof for a rental which is in excess of the maximum permitted under paragraph (g) of section 15(1) of the Control of Rent Ordinance, he loses the protection of the Ordinance and lays himself open to ejection by the landlord. The landlord may at any time thereafter terminate the contractual tenancy and recover possession of the premises from the tenant.

Cases referred to:—

(1) *Ida Fernandez* v. *Murugiah* [1950] M.L.J. 83.

(2) *K.S. Mohamed Ismail* v. *Choo Pin* [1954] M.L.J. 183.

(3) *Hooi Moon* v. *Suppiah Chettiar* [1954] M.L.J. 186.

(4) *Woon Guat Chin* v. *Lim Siar Poon* [1954] M.L.J. 184.

(5) *Wong Yue v. Lim Teng Kooi* [1958] M.L.J. 53.

(6) *Wong Miew Chun* v. *Loh Fatt* [1961] M.L.J. 219.

CIVIL SUIT.

S. K. Lee for the plaintiff.

C. F. J. Ess for the defendants.

Cur. Adv. Vult.

Choor Singh J.: The plaintiff in this suit seeks to recover from the defendants possession of the ground and first floors of a house known as No. 11 Phillip Street, Singapore.

The plaintiff resides on the second floor of the house. She alleges that she is the tenant of the whole house and that the defendants hold

the ground and first floors as her tenants on a monthly tenancy at a rental of $137.50. She claims possession under section 15(1)(g) of the Control of Rent Ordinance. She alleges that the defendants have sublet a cubicle on the ground floor at a rental of $190 per mensem, which rental is in excess of the recoverable rent for that part; or alternatively, that the rent received by them for the part sublet including the apportioned rental or value of the part of the premises retained by them exceeds one hundred and ten per centum of the recoverable rent paid by them.

The defendants deny that they are tenants of the plaintiff. They allege that the tenancy of the whole premises vests in Tan Sin Peng, a partner in their firm, by virtue of his being the sole surviving partner of Chop Chin Cheong, to whom the tenancy of the whole premises was first granted by the landlord in the year 1942. They further allege that the plaintiff is a mere licensee of Tan Sin Peng in respect of the second floor and has never been the tenant of the whole premises.

It is common ground that in 1942 Chop Chin Cheong became the tenant of the whole premises. The first issue to be decided is whether the plaintiff's husband, Tan Tian Kit, was the sole proprietor of Chop Chin Cheong or whether he and Tan Sin Peng were partners thereof. The plaintiff's evidence is as follows. In 1942 the plaintiff's husband commenced business under the name of Chop Chin Cheong at the premises. He was the sole proprietor and he obtained the tenancy of the whole premises in the name of Chop Chin Cheong at a rental of $100 per mensem. Shortly after that, Tan Sin Peng rented from her husband half of the ground floor of the premises at a rental of $50 per mensem, and carried on business there under the style of Tan Sin Peng Shyoko. Chop Chin Cheong was wound up after the death of the plaintiff's husband on the 2nd August, 1944. Then, at Tan Sin Peng's request, the plaintiff let the whole ground floor to him at a rental of $100 per mensem. It was agreed that the plaintiff was to pay all the municipal charges in respect of the whole premises. In 1945 after the liberation of Singapore, Tan Sin Peng requested the plaintiff to let to him the first floor in consideration of his paying the municipal charges in respect of the whole premises. The municipal charges then ranged from $40 to $60 per mensem. The plaintiff agreed, and thereupon Tan Sin Peng became the plaintiff's tenant in respect of the ground and first floors. In 1945 the landlord increased the rent of the premises from $100 to $125 per mensem and the plaintiff in turn increased Tan Sin Peng's rent from $100 to $125 per mensem. In February, 1954, the landlord increased the rent of the premises from $125 to $137.50 per mensem and the plaintiff in turn increased Tan Sin Peng's rent from $125 to $137.50 per mensem. Prior to December, 1961, Tan Sin Peng carried on business at 11 Phillip Street under the style of Tan Sin Peng & Co. and the plaintiff issued rent receipts to him in that name. In December, 1961, Tan Sin Peng changed the name of his firm to S.E.A.C. Company and from then the plaintiff issued receipts to him in that name.

Tan Sin Peng's evidence is as follows. Chop Chin Cheong was started by Tan Tian Kit and himself as partners in equal shares. The firm dealt in hardware. In 1942 both partners were arrested by the Japanese on suspicion that they had bought stolen goods. They were kept in custody for ten days and were eventually tried and discharged. This incident affected Tan Tian Kit's health, and from then he took very little part in the actual running of the business. As Tan Tian Kit was very much afraid of the Japanese, they started another firm under the name of Tan Sin Peng Shyoko. This firm was just a blind and was not registered. Chop Chin Cheong carried on business until the death of Tan Tian Kit. Then Tan Sin Peng sold all the goods of Chop Chin Cheong and utilised the proceeds to pay Tan Tian Kit's funeral expenses. Tan Sin Peng remained in occupation of the premises and continued to pay the rent in the name of Chop Chin Cheong. He used to hand the rent to the plaintiff every month and she used to pay it to the landlord. He did this because the plaintiff pleaded with his mother to request him to allow her to stay on the premises free of rent, and he agreed, at his mother's request, to allow the plaintiff to live on the second floor free of rent. All along he paid the municipal charges in respect of the whole premises. About seven months after the death of Tan Tian Kit, he started Tan Sin Peng & Co. of which he was sole proprietor. Later he changed the name of this firm to S.E.A.C. Company. Subsequently his wife became a partner of S.E.A.C. Company.

Tan Sin Peng admits that Exhibit P.7 and Exhibit P.8 are in the handwriting of Tan Tian Kit, and that they are invoices for quantities of goods sold by Chop Chin Cheong to his firm Tan Sin Peng Shyoko. His explanation that Tan Sin Peng Shyoko was a fictitious firm and that it was a blind to bluff the Japanese does not make sense. I do not see how the Japanese were being bluffed. It is clear that the Japanese were buying goods from Tan Sin Peng Shyoko, which in turn was buying the goods from Chop Chin Cheong. Tan Sin Peng cannot explain how much capital he contributed to become a partner of Chop Chin Cheong. Moreover, he admits that Chop Chin Cheong's bank account was operated by Tan Tian Kit only, while Tan Sin

Peng Shyoko's bank account was operated by Tan Sin Peng alone. This seems to indicate that Chop Chin Cheong belonged to Tan Tian Kit and Tan Sin Peng Shyoko to Tan Sin Peng.

I am unable to accept Tan Sin Peng's allegation that after the death of Tan Tian Kit, he sold all the stock-in-trade of Chop Chin Cheong for $10,000 and handed this sum to a clerk named Saw Sui Meng to be spent on the funeral expenses of Tan Tian Kit. I accept the plaintiff's evidence that she attended to the funeral of her husband and paid all the expenses. It seems to me that, if Tan Sin Peng was a partner of Chop Chin Cheong and the goods of Chop Chin Cheong were sold for $10,000 he would have retained half of this amount for himself. The estate of Tan Tian Kit was administered by the Chinese Bankers Trust Co., Ltd. Tan Sin Peng never claimed from the Chinese Bankers Trust Co. a half share of the assets of Chop Chin Cheong. If he was a partner, he would have certainly done so.

Tan Sin Peng testified that Chop Chin Cheong was never registered with the Registrar of Business Names. The plaintiff produced to the court a certificate of registration. When confronted with it Tan Sin Peng admitted that Chop Chin Cheong was in fact registered and that he assisted in getting it registered. His explanation was that he had forgotten about the registration but remembered it on seeing the certificate.

In my view Tan Sin Peng was not speaking the truth when he said he was a partner of Chop Chin Cheong. He did not impress me as a truthful witness. On the evidence before me I come to the conclusion that Tan Sin Peng never was a partner of Chop Chin Cheong and that Tan Tian Kit was the sole proprietor thereof.

The second issue that I have to decide is, who is the tenant of the whole premises, the plaintiff or Tan Sin Peng? The evidence shows that the plaintiff pays the rent of the whole premises to the landlord; that she has been doing this for the last twenty years; and that she has been collecting rent from Tan Sin Peng for the last twenty years in respect of the part occupied by him and issuing rent receipts to him. The correspondence that passed in 1960 between the plaintiff's solicitors and Tan Sin Peng's solicitors shows that Tan Sin Peng accepted the plaintiff as his landlady. The evidence further shows that Tan Sin Peng made several attempts to get the plaintiff's landlord to transfer the tenancy of the whole premises to him. The plaintiff's landlord refused to accept rent of the whole premises from Tan Sin Peng and to transfer the tenancy to him. On the evidence before me I hold that the plaintiff is the tenant of the whole premises and that the defendant firm is a subtenant of the plaintiff in respect of the ground and first floors of the premises.

In connection with the second issue it was submitted by counsel for the defendants that the plaintiff is estopped from giving evidence that she is the tenant of the whole premises. The reason put forward was that in Suit No. 1039 of 1962* which was brought by Hin Seng & Co. against S.E.A.C. Company it was held that S.E.A.C. Company were tenants of the whole premises and that that judgment is binding on the present plaintiff as she was then a partner of Hin Seng & Co. I do not accept this submission. What was decided in that suit was an issue of law, namely, whether Hin Seng & Co., who had paid rent to S.E.A.C. Company for a room on the ground floor at the rate of $190 per mensem from 1955, and subsequently in 1962 had obtained an order from the Rent Conciliation Board fixing the rent of the room at $35 per mensem with effect from the 1st July, 1962, could recover the difference paid prior to that date. The court held that the difference could not be recovered. It is true that the judgment in that case opens with the following sentence: "The defendants are tenants of the whole premises known as No. 11 Phillip Street, Singapore, the rent of which is $137.50 per mensem". But an examination of the record of that case shows that no witnesses were called and no evidence was recorded. That sentence merely states what the judge understood to be agreed between the parties in that case. It was not a finding of fact made on a contested issue after hearing evidence adduced by the parties. Whether S.E.A.C. Company were tenants of the whole premises or only of the ground and first floors was not material to the issue of law decided by the judge. Accordingly, I hold that the plaintiff is not precluded from giving evidence that she is the tenant of the whole premises.

The third issue is whether the plaintiff has made out a case for recovery of possession under section 15(1)(g) of the Control of Rent Ordinance. In my view, paragraph (g) of section 15(1) has two limbs as follows:

> Where the tenant having sublet the premises or part thereof receives in respect of such subletting:
>
> Rents for any sublet part of the premises in excess of the recoverable rent for that part,
>
> *or*
>
> Rents which exceed in the aggregate one hundred and ten per centum of the recoverable rent paid by the tenant himself including the apportioned rental or value of any part of the premises retained by the tenant or not sublet by him.

In this case the plaintiff has pleaded a breach of the first limb, or alternatively, a breach of the second limb. Counsel for the defendants submitted that the rent of $190 per mensem which

* *Hin Seng & Co.* v. *S.E.A.C. Co.* [1963] M.L.J. 109.

the defendants received in respect of the room sublet by them to Hin Seng & Co. was the standard rent of that room; that they were legally entitled to receive it; that it was so held by the High Court in Suit No. 1039 of 1962 and that the defendants therefore did not commit any breach of section 15(1)(g).

The expression "recoverable rent" means rent fixed by an order of the Rent Conciliation Board or, if no order has been made, the standard rent as defined by the Ordinance: see section 3. When the room was sublet to Hin Seng & Co. at a rent of $190 per mensem, that rent was not fixed by an order of the Board, but it was the standard rent of the room as it was the rent at which the room was first let separately after the 1st August, 1939; and that standard rent was the recoverable rent of the room until it was reduced by the Rent Conciliation Board to $35 per mensem inclusive of municipal charges with effect from the 1st July, 1962. By receiving that rent the defendants did not commit a breach of the first limb of paragraph (g).

But, in my view, the defendants clearly committed a breach of the second limb. The recoverable rent paid by the defendants to their landlady is $137.50 per mensem. One hundred and ten per centum of this is $151.25. The defendants clearly received rent which including the apportioned rental or value of the part of the premises retained by them exceeded in the aggregate one hundred and ten per centum of the recoverable rent paid by them. The defendants were therefore in breach of the second limb of paragraph (g) of section 15(1) of the Ordinance.

Counsel for the defendants submitted that as the plaintiff was a partner of Hin Seng & Co. at the time they were paying $190 per mensem for the room sublet to them by the defendants, she could not now take advantage of the illegal contract to which she was a party. In my view, counsel for the defendants has misconstrued the provisions of section 15(1)(g) of the Ordinance. It is true that no court will lend its aid to a person who founds his cause of action upon an immoral or illegal act; but in this case, there was nothing immoral or illegal in the defendants renting out a room to Hin Seng & Co. at a rent in excess of the maximum permitted under the second limb of paragraph (g) of section 15(1) of the Ordinance. In fact in Suit No. 1039 of 1962 this court held that the defendants were entitled to collect the rent of $190 per mensem from Hin Seng & Co. because that was the standard rent of the room and they could therefore go on collecting that rent unless and until the Rent Conciliation Board ordered otherwise. Section 3(1) of the Ordinance provides that it is unlawful for any landlord to receive rent in respect of any tenancy of premises, in excess of the rent fixed by an order of the Rent Conciliation Board, or, if no order has been made, in excess of the standard rent of the premises and any contravention of this section is an offence punishable under section 5 of this Ordinance. But a breach of the second limb of paragraph (g) of section 15(1) is not an offence under the Ordinance, and therefore the defendants have not committed any offence by collecting $190 per mensem from Hin Seng & Co. as rental of the room sublet to them. Consequently, the plaintiff, as a partner of Hin Seng & Co. has not abetted the commission of any offence.

The next submission of counsel for the defendants raised an interesting point of law. Counsel contended that the words "receives in respect of such subletting rents etc." in paragraph (g) of section 15(1) of the Ordinance relate to the time when the contractual tenancy terminates and as the present defendants had stopped receiving from Hin Seng & Co. a rent in excess of the maximum permitted under paragraph (g) before the tenancy was terminated the plaintiff could not invoke paragraph (g) and an order for possession should not be made. In support of his submission counsel cited *Ida Fernandez* v. *Murugiah*,[1] where Murray-Aynsley C.J. said:

> "Whether the case falls within one of the exceptions or not depends on the state of facts at the moment when the previous tenancy is determined...."

Counsel also cited *K. S. Mohamed Ismail* v. *Choo Pin*.[2] In that case the contractual tenancy and the wrongful receipt of excessive rent under paragraph (j) of section 13(1) of the Control of Rent Ordinance, 1948, of Malaya, terminated at exactly the same period, but there was some delay on the part of the landlord in commencing proceedings against the tenant for the recovery of possession of the premises and it was argued that the delay gave the tenant protection. Briggs J. in rejecting this argument said:

> "....I cannot see that this argument can be valid. It is necessary to consider what the situation was when the contractual tenancy ended. If then the tenant was entitled to protection against deprivation of possession, he became by holding over a statutory tenant; but, if he was not protected against deprivation of possession, he could not become a statutory tenant and never has become one. I think the delay cannot possibly affect the matter and consider that, just as the tenant could have been ejected by action on the 1st December, 1952, he can be ejected by action taken now. The decision in the Singapore case of *Ida Fernandez* v. *M. Murugiah*, appears to suggest this view.
>
> The reference made to me did not state in terms that the payments under paragraph (j) had continued right up to the determination of the contractual tenancy, and I wish to make it clear that this decision does not deal with the legal consequences which would have ensued, if the payments had been discontinued at any time prior to the expiration of the contractual tenancy. Various considerations might apply and questions of 'reasonable time' might arise, with which I cannot now deal. Where, however, as here, the payments contrary

to paragraph (j) continued to the very end of the contractual tenancy, I am of opinion that it is possible to obtain ejectment and that the present tense of the word 'receives' in paragraph (j) does not lead to any other consideration...."

Counsel also cited *Hooi Moon* v. *Suppiah Chettiar.*[3] In that case before the ejectment proceedings were started but subsequent to a notice to quit, the tenant had reduced the rent that he was collecting from his subtenant to within the legal maximum. It was argued that the words "receives....rent" in paragraph (j) of section 13(1) of the Control of Rent Ordinance, 1948, of Malaya, related to the time when ejectment proceedings were started. Spencer Wilkinson J. in rejecting this argument said:

"....If the provisions of paragraph (j) are construed in the manner suggested by Mr. Ong Huck Lim the result would be as far as I can see that a tenant could charge his sub-tenants as much rent as he chose providing that he reduced the rent before ejectment proceedings had actually been started against him in court. Where a statute is not clear it is permissible to look at the possible results of different constructions in order to see what the intention of the Legislature was. In my opinion it could not have been the intention of the Legislature to allow a tenant to make a profit out of his sub-tenants and then to retain that profit by the simple expedient of reducing the rent when he was threatened by the landlord with ejectment.

I think the principle indicated by the judgment of Briggs J. referred to above is the correct one and that if at the date when the contractual tenancy terminates the tenant is receiving rent in excess of seventy-five per cent of the main rent the conditions of paragraph (j) to section 13(1) are fulfilled, and the landlord is entitled to possession. In other words if, up to the time when the notice to quit terminates, the tenant has been receiving excessive rent he does not become a statutory tenant under section 16 of the Ordinance...."

Counsel for the plaintiff cited *Woon Guat Chin* v. *Lim Sian Poon.*[4] In that case Thomson J. (as he then was) expressed the view that paragraph (j) of section 13(1) of the Control of Rent Ordinance, 1948, of Malaya, should be construed strictly. His Lordship said:

"....Construing paragraph (j) strictly it seems to me that it is contravened if at any time, or, at any rate any time after the commencement of the Ordinance, the tenant has received rents amounting to more than 75 per cent of the rent paid by him to the landlord...."

Counsel for the plaintiff also cited *Wong Yue* v. *Lim Teng Kooi.*[5] There, Good J. decided to follow the opinion expressed in the case of *Woon Guat Chin* v. *Lim Sian Poon.* When considering the views expressed by Spenser Wilkinson J. in the case of *Hooi Moon* v. *Suppiah Chettiar,* Good J. commented:

"....I do not, however, consider that this is a different statement of the law from that contained in the judgment of Thomson J. It seems to me that since Spenser Wilkinson J. referred to Thomson J.'s judgment in his own judgment and did not differ from it he was only deciding so much as he had to decide for the purposes of the particular case before him, and that Thomson J. in effect decided the same thing as Spenser Wilkinson J. and something further which was necessary for the purpose of the case before him. It therefore seems to me quite clear that if the landlord establishes that the tenant received excessive rent at any time after the 1st July, 1956, when the Ordinance came into force, and before the commencement of proceedings he is entitled to possession whether or not he was the landlord at the time when the excessive rent was accepted...."

Counsel for the plaintiff also cited *Wong Miew Choong* v. *Loh Fatt.*[6] In that case the tenant who had been ordered to give up possession of the premises as he had contravened the provisions of section 12(1)(j) of the Control of Rent Ordinance, 1956, of Malaya, appealed on the ground that at the date when the contractual tenancy was determined he was not receiving in respect of the portion of the premises sublet by him any sum exceeding by more than ten per centum the rent he himself paid to his landlord so as to entitle the landlord to possession under section 12(1)(j) of the Ordinance. The authority cited in support of this contention was *Mohamed Ismail* v. *Choo Pin.* Ong J. (as he then was) in discussing *Mohamed Ismail's* case said:

"....In that case the tenant, notwithstanding receipt of a notice determining his contractual tenancy, continued up to the very last date when his tenancy was determined, to charge his sub-tenants rents at a rate in excess of the maximum which he could lawfully have charged without losing the protection afforded to statutory tenants. Briggs J. held that in those circumstances the tenant never became a statutory tenant upon the determination of his contractual tenancy, and the landlord was therefore entitled to recover possession.

That case in my opinion is no authority for the proposition that, if at the date when the contractual tenancy was determined, the tenant was not receiving from his sub-tenants rents exceeding the permissible maximum, then the landlord fails to establish a case for recovery of possession under paragraph (j) of section 12(1). In answering a reference by the Rent Assessment Board Briggs J. clearly confined his opinion to the facts set out in the case stated and he expressly disclaimed that his decision had anything to do with 'the legal consequences which would have ensued if the payments (i.e. over-payments) had been discontinued at any time prior to the expiration of the contractual tenancy' (see the penultimate paragraph of his judgment....)"

In my opinion a landlord's right of action for recovery of possession arises immediately upon the tenant subletting at a rent in excess of the maximum permitted under paragraph (g) of section 15(1) of the Control of Rent Ordinance. As was observed by Ong J. (as he then was) in *Wong Miew Choong's* case:

"The Control of Rent Ordinance merely operates as a fetter on the exercise of the common law rights of a landlord. Such being the case, any statutory invasion of or interference with private rights ought to be strictly construed. These fetters on a landlord's rights to recover possession of premises from a tenant are struck off if he can bring his claim under any of the grounds specified in section 12(1)."

In my opinion when a tenant sublets the premises or any portion of it for a rental which is in excess of the maximum permitted under paragraph (g) of section 15(1) of the Ordinance, the tenant removes the fetters on the landlord's

right to recover possession. The tenant immediately loses the protection of the Ordinance and lays himself open to ejection by the landlord. The landlord (and his successors in title) may at any time thereafter terminate the contractual tenancy and recover possession of the premises from the tenant.

In the present case, the defendants had been collecting rent in excess of the maximum permitted under the second limb of paragraph (g) of section 15(1) of the Ordinance from Hin Seng & Co. for some seven years and had thereby given the plaintiff grounds for invoking paragraph(g). The plaintiff has clearly established her right to possession under paragraph (g) of section 15(1) of the Control of Rent Ordinance. The defendants are accordingly ordered to give forthwith to the plaintiff vacant possession of the ground and first floors of house No. 11 Phillip Street, Singapore. The defendants are also ordered to pay the plaintiff the costs of this action as taxed.

Order accordingly.

Solicitors: *S. K. Lee; R. C. H. Lim & Co.*

KOH JOK SIM v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Aziz J.) March 16, 1966]

[Kota Bahru — Criminal Appeal No. 3 of 1966]

Evidence — Statements to excise officers — Criminal Procedure Code (Cap. 6), s. 113 and Evidence Ordinance, 1950, ss. 25 & 26.

Excise Act, 1961 — Statements to excise officers — Admissibility.

This was an appeal against the conviction of the appellant on a charge of possession of intoxicating liquor and possession of a still. The evidence against the appellant on the first charge consisted solely of his admission, which was given in answer to questions by an excise officer, who it appeared had said in Malay "Don't you tell lies".

Held: (1) section 113 of the Criminal Procedure Code (Cap. 6) and sections 25 and 26 of the Evidence Ordinance, 1950, do not apply to excise officers and statements made by an accused person to an excise officer are admissible in evidence provided the court is satisfied that the answers were given voluntarily;

(2) in this case the part of the statement made by the appellant after the warning had been given was inadmissible and therefore the conviction on the first charge must be quashed.

CRIMINAL APPEAL.

C. O. Lim for the appellant.

Azmi bin Dato' Kamaruddin (Deputy Public Prosecutor) for the respondent.

Abdul Aziz J. (delivering oral judgment): The appellant was convicted of two offences under the Excise Act, 1961: firstly, for possession of approximately 13 gallons of intoxicating liquor contained in 13 bottles and secondly, for possession of a still for distilling liquor. He was convicted and sentenced to a fine of $640 in respect of the first charge and $160 in respect of the second charge. Against the conviction and sentence the appellant has now appealed.

Evidence showed that on the day in question a party of excise officers raided the appellant's house situated in a kampong at Temangan in the Machang district. The appellant's house was apparently one of the many houses in that kampong as evidence showed that there were two or three other houses two hundred yards away from the appellant's house in the same kampong. In the house the excise party found a kuali and in a hut 25 yards from the house they found a drum vat. According to the evidence the kuali was clean and there was a distinct ring mark under the kuali which fitted the vat which was found in the hut near the house. The appellant admitted ownership of these two articles. Upon further search the excise party found 13 bottles of intoxicating liquor near the river bank about 400 yards away from the house and ten feet away from the place where the bottles were found there was a fireplace and near the fireplace were two jars containing fermented mash and one drainer and one pipe. At this stage I would like to quote the evidence of P.W.1 as to what happened next. He said in his examination-in-chief:—

> "Having discovered them (the articles) I questioned the accused. In his reply he replied that P.6 (the 13 bottles) belonged to him for his own consumption."

In cross-examination he said:—

> "When I questioned accused in Malay, I asked 'Ini barang semua siapa punya'. I did say 'Awak jangan chakap bohong' (Don't you tell lies)."

As the evidence in support of the 1st charge was dependent solely upon the admission of the appellant and as unfortunately the learned president did not deal with the question of admissibility of the statement, it is, therefore, necessary for me to examine the effect of those words upon the statement.

It is fairly well settled that section 113 of the Criminal Procedure Code and sections 25 and 26 of the Evidence Ordinance do not apply to excise officers and there is nothing in law to prevent the answers given to an excise officer by a person subsequently accused of an offence from being used in evidence subject to the important proviso that the court is satisfied that the answers were voluntarily given.

A number of cases including two Malayan cases were cited in support of the hypothesis that the voluntary nature of the statement would be lost if words like "You better tell the truth" or "You are bound to say everything" were used before the statement was given. Having regard to these cases I feel compelled to come to the conclusion that that part of the statement given